

**SUMMARY OF CONFERENCE AGREEMENT ON
H.R. 1180 RELATING TO EXPIRING TAX PROVISIONS
AND OTHER REVENUE PROVISIONS**

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of the

JOINT COMMITTEE ON TAXATION



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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a summary of the conference agreement on H.R. 1180 relating to expiring tax provisions, time-sensitive provisions, and revenue offsets. The House Committee on Ways and Means reported H.R. 2923, a bill to extend expiring tax provisions on September 28, 1999. The Senate Committee on Finance reported an original bill (S. 1792) relating to expiring tax provisions on October 26, 1999. The bill passed the Senate by unanimous consent on October 29, 1999. The conference agreement to H.R. 1180 also contains provisions to amend the Social Security Act to expand the availability of health care coverage for working individuals with disabilities.

¹ This document may be cited as follows: Joint Committee on Taxation, *Summary of Conference Agreement on H.R. 1180 Relating to Expiring Tax Provisions and Other Revenue Provisions* (JCX-85-99), November 17, 1999.

SUMMARY OF CONFERENCE AGREEMENT ON EXPIRING TAX PROVISIONS, TIME-SENSITIVE PROVISIONS, AND REVENUE OFFSETS²

A. Extension of Expiring Tax Provisions

1. Extend minimum tax relief for individuals

The conference agreement extends the provision that allows an individual to offset the regular tax liability in full (as opposed to the only the amount by which the regular tax exceeds the tentative minimum tax) to taxable years beginning in 1999. For taxable years beginning in 2000 and 2001, the personal nonrefundable credits may offset both the regular tax and the minimum tax.

2. Extend research and experimentation credit and increase rates for the alternative incremental research credit

The conference agreement extends the research credit through June 30, 2004, and increases the credit rate under the alternative incremental credit by one percentage point for each step. The conference agreement expands the definition of qualified research to include research undertaken in Puerto Rico and possessions of the United States. Research tax credits that are attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, may not be taken into account in determining any amount required to be paid for any purpose under the Internal Revenue Code prior to October 1, 2000. Similarly, research tax credits that are attributable to the period beginning on October 1, 2000, and ending on September 30, 2001, may not be taken into account in determining any amount required to be paid for any purpose under the Internal Revenue Code prior to October 1, 2001.

3. Extend exceptions under subpart F for active financing income

The conference agreement extends for two years the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business. The provision is effective for taxable years of a foreign corporation beginning after December 31, 1999, and before January 1, 2002, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporation end.

² The bill also contains a provision that would simplify the definition of an eligible foster child for purposes of the earned income credit.

4. Extend suspension of net income limitation on percentage depletion from marginal oil and gas wells

The conference agreement extends for two years, through December 31, 2001, the present-law suspension of a rule limiting percentage depletion deductions of oil and gas independent producers to 100 percent of the net income from the mineral property.

5. Extend the Work Opportunity Tax Credit

The conference agreement extends the Work Opportunity Tax Credit for 30 months (through December 31, 2001). The provision is effective for wages paid to, or incurred with respect to, qualified individuals who begin work for the employer on or after July 1, 1999, and before January 1, 2002.

6. Extend the Welfare-to-Work Tax Credit

The conference agreement extends the welfare-to-work credit for 30 months (through December 31, 2001). The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after July 1, 1999, and before January 1, 2002.

7. Extend exclusion for employer-provided educational assistance

The conference agreement extends the present-law exclusion for employer-provided educational assistance through December 31, 2001.

8. Extend and modify tax credit for electricity produced by wind and closed-loop biomass facilities

The conference agreement extends through December 31, 2001, the period when facilities qualifying for a present-law tax credit for electricity produced from wind and closed-loop biomass facilities may be placed in service. Facilities producing electricity from poultry waste are made eligible for the tax credit, effective for facilities placed in service after December 31, 1999. In addition, under the conference agreement, the extension is limited to facilities placed in service before January 1, 2002. Finally, the conference agreement includes a clarification of wind facilities eligible for the credit.

9. Extend duty-free treatment under the Generalized System of Preferences (“GSP”)

The conference agreement authorizes an extension of the GSP program through September 30, 2001, from July 1, 1999.

10. Extend authority to issue qualified zone academy bonds

The conference agreement authorizes up to \$400 million of qualified zone academy bonds to be issued in each of calendar years 2000 and 2001.

11. Extend the tax credit for first-time D.C. homebuyers

The conference agreement provides for a one-year extension of the tax credit for first-time D.C. homebuyers, applicable to residences purchased on or before December 31, 2001.

12. Extend expensing of environmental remediation expenditures

The conference agreement extends the present-law expiration date for the election to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred to include those expenditures paid or incurred before January 1, 2002.

13. Increase rum excise tax coverover rate

The conference agreement increases the present-law rum coverover rate for Puerto Rico and the Virgin Islands from \$10.50 to \$13.25 per proof gallon, during the period July 1, 1999 through December 31, 2001. Special rules are included for transfers in Fiscal Year 2000.

B. Other Time-Sensitive Provisions

1. Prohibit disclosure of advanced pricing agreements (“APAs”) and APA background files

The conference agreement confirms that APAs and related background information are confidential return information, and are not "written determinations" for purposes of the public inspection requirements of section 6110. The conference agreement requires the Department of Treasury to prepare annually a detailed report regarding APAs and the APA program. The conference agreement is effective upon enactment. Under the conference agreement, APAs and their related background files can not be released to the public, irrespective of the date the APA was executed.

2. Authority to postpone certain tax-related deadlines by reason of year 2000 failures

Under the conference agreement, the Secretary of the Treasury is permitted to postpone, on a taxpayer-by-taxpayer basis, certain tax-related deadlines for a period of up to 90 days in the case of a taxpayer that the Secretary determines to have been affected by an actual year 2000 related failure.

3. Add certain vaccines against streptococcus pneumoniae to the list of taxable vaccines

The conference agreement adds any conjugate vaccine against streptococcus pneumoniae to the list of taxable vaccines, effective for vaccine purchases after the date of enactment.

4. Delay requirement that registered motor fuels terminals offer dyed fuel as a condition of registration

The conference agreement delays the effective date of the mandate requiring the dyeing of certain fuels removed from registered pipeline or barge terminal facilities for 1-1/2 years, until January 1, 2002.

5. Provide that Federal production payments to farmers are taxable in the year received

The conference agreement provides that an option to accelerate the receipt of any payment under a production flexibility contract will not accelerate the recognition of income unless the option is exercised. The provision is effective on the date of enactment.

C. Revenue Offset Provisions

1. Modification of individual estimated tax safe harbor

The conference agreement provides that any individual with an AGI of more than \$150,000 (\$75,000 for a married taxpayers filing separately) making estimated tax payments based on prior year's tax must do so based on 108.6 percent of prior year's tax for taxable years beginning in 2000 and based on 110 percent of prior year's tax for taxable years beginning in 2001.

2. Clarify the tax treatment of income and losses on derivatives

The conference agreement adds three categories to the list of assets the gain or loss on which is treated as ordinary under section 1221. The new categories are: (1) commodities derivatives held by commodities derivatives dealers; (2) hedging transactions; and (3) supplies of a type regularly consumed by the taxpayer in the ordinary course of the taxpayer's trade or business. With respect to hedging transactions, the conference agreement replaces the present-law risk reduction standard with a risk management standard and provides that the definition of a hedging transaction includes a transaction entered into primarily to manage such other risks as the Secretary may prescribe in regulations. The provision in the conference agreement is effective for any instrument held, acquired or entered into, transactions entered into, and supplies held or acquired on or after the date of enactment.

3. Expand reporting of cancellation of indebtedness income

The conference agreement requires information reporting on discharges of indebtedness by any organization a significant trade or business of which is the lending of money, such as finance companies and credit card companies (whether or not affiliated with financial institutions). The conference agreement is effective with respect to discharges of indebtedness after December 31, 1999.

4. Limit conversion of character of income from constructive ownership transactions

The conference agreement limits the amount of long-term capital gain a taxpayer can recognize from derivative transactions with respect to certain pass-through entities. The amount of long-term capital gain is limited to the amount of such gain the taxpayer would have had if the taxpayer owned a direct interest in the pass-through entity during the term of the derivative contract. Any gain in excess of this amount is treated as ordinary income. An interest charge is imposed on the amount of gain that is treated as ordinary income. The provision generally applies to transactions entered into on or after July 12, 1999.

5. Treatment of excess pension assets used for retiree health benefits

Under the conference agreement, the present-law provision permitting qualified transfers of excess defined benefit pension plan assets to provide retiree health benefits under a section 401(h) account is extended through December 31, 2005. In addition, the present-law minimum benefit requirement is replaced by the minimum cost requirement that applied to qualified transfers before December 9, 1994, to section 401(h) accounts, generally effective with respect to transfers after the date of enactment.

6. Modify installment method and prohibit its use by accrual method taxpayers

The conference agreement generally prohibits the use of the installment method of accounting for dispositions of property that would otherwise be reported for Federal income tax purposes using an accrual method of accounting. The conference agreement does not change present law regarding the availability of the installment method for dispositions of property used or produced in the trade or business of farming, of timeshares or residential lots if the taxpayer elects to pay interest under section 453(l), or sales by cash method taxpayers.

The conference agreement also modifies the installment sale pledge rule to provide that entering into any arrangement that gives the taxpayer the right to satisfy an obligation with an installment note will be treated as the direct pledge of the installment note and gain required to be recognized.

The provisions are effective for sales or other dispositions entered into on or after the date of enactment.

7. Denial of charitable contribution deduction for transfers associated with split-dollar insurance arrangements

The conference agreement restates present law to provide that no charitable contribution deduction is allowed for a transfer to or for the use of a charitable organization, if in connection with the transfer the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor. The provision also imposes on the charitable organization an excise tax in the amount of the premiums paid. The provision applies generally to transfers, or premiums paid, after February 8, 1999.

8. Distributions by a partnership to a corporate partner of stock in another corporation

The conference agreement provides for a basis reduction to assets of a corporation if stock in that corporation is distributed by a partnership to a corporate partner. The reduction applies if, after the distribution, the corporate partner controls the distributed corporation. The provision is effective for distributions after July 14, 1999, except that in the case of a corporation that is a partner in a partnership on July 14, 1999, the provision is effective for distributions by that partnership to the corporation after the date of enactment (or, for a corporation that so elects, distributions after June 30, 2001).

9. Treatment of real estate investment trusts (“REITs”)

a. Provisions relating to REITs

The conference agreement provides that a REIT may not own more than 10 percent of the vote or value of another entity. However, REIT ownership of a “taxable REIT subsidiary,” engaged in certain activities, can exceed this amount. Rules regarding the operation of hotels and health care facilities are provided, as well as a definition of “independent contractor” for certain purposes. Certain REIT rules relating to distributions are conformed to those for regulated investment companies. The conference agreement also substitutes a fair market value comparison for the present law adjusted basis comparison, in determining whether certain rents from personal property exceed a 15 percent limit. These provisions are generally effective for taxable years beginning after December 31, 2000, with transition for certain REIT holdings and leases in effect on July 12, 1999.

b. Modify estimated tax rules for closely-held REITs

The conference agreement provides that year-end dividends received by a 10-percent owner of a closely-held REIT must be accelerated for that person’s estimated tax purposes. The provision is effective for estimated tax payments due on or after December 15, 1999.